

REMARKS

Applicants appreciate the detailed examination evidenced by the Office Action mailed May 27, 2009 ("Office Action"). Applicants have amended Claim 4 to depend from Claim 1 and have amended several of the claims to use the American spelling "polarization" in place of the New Zealand form "polarisation", thus overcoming the claim objections on page 2 of the Office Action. Applicants have also amended independent Claim 1 to further clarify the claimed subject matter. Reasons supporting patentability of the claims are discussed below.

Claims 1, 2 and 4-12 are patentable

Claims 1, 2 and 4-12 stand rejected "under 35 U.S.C. 102(b) as being anticipated by Arai et al. (US 2003/0210056) (hereinafter Arai) in view of Lam et. al. (US 2004/0091777)." Office Action, p. 3. The Office Action further states that "Arai does not disclose explicitly, detecting a first change in battery voltage and a subsequent second change in battery voltage, and associating the first change with polarisation of the a negative electrode and the second change with polarisation of a positive electrode", but asserts that "[i]t would have been obvious . . . to use positive and negative electrodes voltage variations as taught by Lam in Arai's polarization since the method of Lam enable the gassing rates to be controlled within safe limits to improve the life of lead acid batteries, Such as VRLA batteries." Office Action, p. 3.

As an initial matter, these rejections are clearly erroneous because they represent a misapplication of 35 U.S.C. §102(b). In particular, the grounds presented in the Office Action are in a form that is improper for an anticipation rejection under 35 U.S.C. §102(b). For at least these reasons, the rejections should be withdrawn.

Even if the rejections were to be reasserted as rejections under 35 U.S.C. §103, however, they would still be erroneous because Lam is not prior art to the present application. The present application is a 35 U.S.C. §371 national stage application of International Application No. PCT/NZ2004/000141, which claims priority to U.S. Provisional Patent Application No. 60/484,571 filed July 2, 2003. The earliest effective date for Lam as a reference to support a §103 rejection would appear to be its effective date under 35 U.S.C. §102(e), which is its US filing date of September 8, 2003. As this date falls after the July 2, 2003 filing date of U.S. Provisional Patent Application No. 60/484,571 from which the present application claims priority, Lam is not prior art to the present application. For at least these reasons, Applicants submit that the rejections of Claims 1, 2 and 4-12 are erroneous, and that Claims 1, 2 and 4-12 are patentable.

Applicants further note that the rejections of Claims 11 and 12 erroneously refer to "Finger," which is not identified as a cited reference in the statement of rejection of Claims 1, 2 and 4-12 on page 3 of the Office Action. Applicants submit that these rejections are erroneous for at least this additional reason.

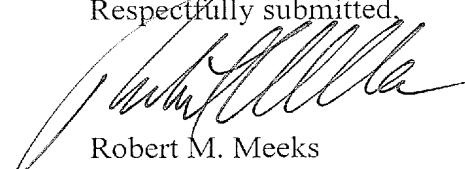
Claim 13 is patentable

Claim 13 stands "rejected under 35 U.S.C. §103(a) as being unpatentable over Finger in view of Bushong et. al. (US 2004/0101747) (hereinafter Bushong), and further in view of Lam." Office Action, p. 5. Applicants assume "Finger" is U.S. Patent Application Publication No. 2002/0060555 to Finger cited in the prior office action, but note that this reference is not properly identified in the present Office Action. Moreover, as discussed above, Lam is not prior art to the present application. For at least these reasons, Applicants submit that the rejection of Claim 13 is erroneous, and that Claim 13 is patentable.

Conclusion

As all of the claims are in condition for allowance, Applicants respectfully request allowance of the claims and passing of the application to issue in due course. Applicants urge the Examiner to contact Applicants' undersigned representative at (919) 854-1400 to resolve any remaining formal issues.

Respectfully submitted,

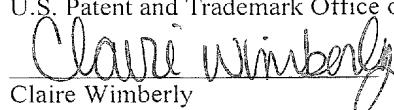


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